

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

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CLERK OF DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY 

BOARD OF REGENTS OF THE UNIVERSITY OF
TEXAS SYSTEM,

PLAINTIFF,

-AGAINST-

Case No.: A-05-CA-198 SS

ALCATEL, ALCATEL USA, INC.,
AMOI ELECTRONICS, INC.,
ANEXTEK GLOBAL INC.,
ARIMA COMMUNICATION CORP.,
AUDIOVOX COMMUNICATIONS CORP.,
CHI MEI COMMUNICATION SYSTEMS, INC.,
COMPAL COMMUNICATIONS, INC.,
CURITEL COMMUNICATIONS, INC.,
GIZMONDO EUROPE, LTD.,
HALER GROUP CO.,
HAIER AMERICA IMPORT L.L.C.,
HAIER AMERICA TRADING L.L.C.,
HON HAI PRECISION INDUSTRY CA, LTD.,
RESEARCH IN MOTION LIMITED,
RESEARCH IN MOTION CORP.,
SHARP CORPORATION, a.k.a. SHARP
KABUSHIKI KAISHA,
SYNNEX CORP., TCL COMMUNICATION
TECHNOLOGY HOLDINGS LIMITED,
TCL & ALCATEL MOBILE PHONES LIMITED,
TIGER TELEMATICS, INC., TOSHIBA
AMERICA, INC., TOSHIBA AMERICA
ELECTRONIC COMPONENTS, INC.,
VK. CORPORATION, VK MOBILE USA, INC.,
AND UTSTARCOM, INC.

DEFENDANTS.

**TCL COMMUNICATION TECHNOLOGY HOLDINGS LIMITED'S
MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND
REQUEST FOR HEARING**

Defendant TCL Communication Technology Holdings, Limited ("TCL") moves
pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure to dismiss all claims

asserted by the Board of Regents of the University of Texas System (“Plaintiff”) against TCL for lack of personal jurisdiction, and respectfully shows unto the Court the following:

I. BACKGROUND

Plaintiff’s most recent complaint in this matter, its Second Amended Complaint For Patent Infringement and Jury Demand filed May 6, 2005, purports to assert two claims against TCL: (i) infringement of United States Patent No. 4,674,112 (the “112 Patent”), and (ii) inducing and contributing to infringement of the 112 Patent.¹ Specifically, Plaintiff asserts that TCL has been, and is currently, infringing and/or contributing to infringement of the 112 Patent by making, using, selling, offering for sale, and/or importing in or into the United States, without authority, products that fall within the scope of the 112 Patent.²

Plaintiff alleges that TCL is subject to personal jurisdiction in this matter because: (i) it has “minimum contacts with the forum as a result of business conducted within the State of Texas and within the Western District of Texas; and (ii) because of its “conduct in making, using, selling, offering to sell, and/or importing infringing products within the State of Texas and within the Western District of Texas.”³ Plaintiff makes false allegations on both counts, because TCL has never done any business in or directed at the state of Texas. Therefore, the Court should dismiss all claims against TCL.

¹ TCL makes no admission regarding the validity of Plaintiff’s asserted claims against TCL in its Second Amended Complaint and reserves the right to contest all allegations and challenge the sufficiency of such claims pursuant to Rule 12(b)(6) or otherwise.

² See Plaintiff’s Second Amended Complaint for Patent Infringement and Jury Demand at ¶¶ 36, 55.

³ See *id.* at ¶ 30.

II. ARGUMENT

Plaintiff bears the burden of establishing that this Court has personal jurisdiction over TCL.⁴ Plaintiff's bare assertion that TCL "engages in business in this state" is completely false, and it is impossible for Plaintiff to prove a sufficient nexus between TCL and Texas to successfully meet its burden. Absent such showing by Plaintiff, there is no basis for the Court to exercise personal jurisdiction over TCL.⁵

There are two prerequisites to this Court's exercise of personal jurisdiction.⁶ First, Plaintiff must demonstrate that TCL purposefully established minimum contacts with the state of Texas.⁷ Put succinctly, Plaintiff is obligated to prove acts by TCL demonstrating a purpose to avail itself of the benefits and protections of Texas law, resulting in a substantial connection with the State.⁸ The demonstrated contacts must be significant enough to put a defendant on notice that it is subject to suit in Texas.⁹ Second, even if Plaintiff establishes minimum contacts, which TCL asserts is impossible, the Court's exercise of personal jurisdiction must comport with traditional notions of fair play and substantial justice.¹⁰

With regard to minimum contacts, Plaintiff must show either (1) that TCL maintained continuous and systematic contacts with the forum state (the standard for

⁴ See *Nutrition Physiology Corp. v. Enviros Ltd.*, 87 F.Supp.2d 648, 650 (N.D. Tex. 2000); *Metro. Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F.3d 560, 566 (2d Cir. 1996); *Wilson v. Belin*, 20 F.3d 644, 648 (5th Cir. 1994).

⁵ See *Tichenor v. Roman Catholic Church*, 32 F.3d 953, 961 (5th Cir. 1994).

⁶ See *Marathon Oil Co. v. Ruhrgas*, 182 F.3d 291, 294-95 (5th Cir. 1999) (noting that a constitutional analysis of personal jurisdiction requires minimum contacts and compliance with traditional notions of fair play and substantial justice).

⁷ See *Asahi Metal Ind. v. Superior Court*, 480 U.S. 102, 108-09 (1987) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985)).

⁸ See *id.* at 109.

⁹ See *id.* at 110; *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980) (holding that a defendant must "reasonably anticipate being haled into: a state's courts).

¹⁰ See *Asahi*, 480 U.S. at 113.

general jurisdiction) or (2) that TCL's purposeful contacts with the state gave rise to the cause of action (the standard for specific jurisdiction).¹¹ TCL lacks contacts with the state of Texas necessary to satisfy either standard.

A. TCL is Not Subject to the General Jurisdiction of This Court.

Two cases have set the standard for judging general jurisdiction, *Helicopteros* and *Perkins v. Benguet Consolo Mining Co.*, 342 U.S. 437 (1952). The defendant in *Perkins* carried on a portion of its general business - holding directors' meetings, establishing the president's office, disbursing salaries, establishing bank accounts, maintaining company files, conducting correspondence, and managing the rehabilitation of the corporation's foreign property - in Ohio.¹² The Supreme Court found these pervasive contacts to constitute doing a portion of the defendant's regular business in the state and thus sufficient to justify exercising jurisdiction.¹³ In contrast, *Helicopteros* provided a floor for evaluating the contacts necessary to exercise general jurisdiction. The defendant at issue in *Helicopteros* sent its chief executive to Texas to negotiate a contract, accepted checks drawn on a Texas bank, purchased helicopters, equipment, and training from a Texas company, and sent several individuals to Texas for training.¹⁴ Despite the substantial contact with Texas and the significant amount of commerce involved, the court found no basis to exercise jurisdiction.¹⁵ Unlike *Perkins*, the defendant in *Helicopteros* did not carry

¹¹ See *Helicopteros Nacionales De Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984).

¹² See *Perkins*, 342 U.S. at 447-49.

¹³ *Id.*

¹⁴ See *Helicopteros*, 466 U.S. at 416.

¹⁵ See *Helicopteros*, 466 U.S. at 418-19; *Wenche Siemer v. Learjet Acquisition Corp.*, 966 F.2d 179,181 (5th Cir. 1992) (analyzing *Helicopteros* and noting key points including the plaintiffs were not domiciled in Texas, the harm did not occur in Texas, and the alleged misconduct did not occur in Texas); see

on a portion of its general business in Texas—its contacts were not continuous and systematic.

Here, TCL falls far short of having the “continuous and systematic” contacts necessary to support Texas jurisdiction. Unlike even the defendant in *Helicopteros*, TCL does not conduct business within the State of Texas, nor has it ever conducted business in the State of Texas.¹⁶ TCL does not have any offices, regular places of business, employees, or property in the State of Texas.¹⁷ Finally, TCL does not, and has not, engaged in making, using, selling, offering to sell, or importing any products in or into the United States, including the State of Texas, and it does not advertise or promote its products or services in the State of Texas.¹⁸ This absence of contact with the state precludes a finding of general jurisdiction over TCL.¹⁹

B. TCL is Not Subject to the Specific Jurisdiction of This Court.

There is also an insufficient connection between TCL and the State of Texas when the Plaintiff’s allegations are viewed specifically. Exercising specific jurisdiction requires “virtually a direct link between the claim and the contacts.”²⁰ Plaintiffs must show that that TCL: (i) purposely directed its activities at residents of the State of Texas, (ii) that this

also *Luna v. Compania Panamena de Aviacion, S.A.*, 851 F. Supp. 826,833 (S.D. Tex. 1994) (listing extensive contacts with Texas that did not sufficiently support general jurisdiction).

¹⁶ See Ex. A., Declaration of Chambers Wong at ¶ 3.

¹⁷ See *id.* at ¶¶ 4-5.

¹⁸ See *id.* at ¶¶ 7-9.

¹⁹ See *Asahi*, 480 U.S. at 112-13; *Helicopteros*, 466 U.S. at 411-12; *Felch v. Transportes Lar-Mex SA de Cv*, 92 F.3d 320,329 (5th Cir. 1996) (quoting *Arkwright Mut. Ins. v. Transportes de Nuevo Laredo*, 879 F. Supp. 699 (S.D. Tex. 1994).

²⁰ *Luna*, 851 F. Supp. at 832 (S.D. Tex. 1994) (quoting *Kervin v. Red River Sid Area, Inc.*, 711 F. Supp. 1383, 1389-90 (E.D. Tex. 1989)).

litigation results from injuries that arose from those activities, and (iii) that the assertion of jurisdiction over TCL comports with fair play and substantial justice.²¹

It is impossible for Plaintiff to prove any of these prerequisites to specific jurisdiction given that TCL has never conducted business in the State of Texas.²² None of the purported malfeasance alleged against TCL could have occurred in Texas because TCL has not engaged in making, using, selling, offering to sell, or importing any products in or into the State of Texas or otherwise advertised or promoted its products or services in the State of Texas.²³ There is no link between Texas and the accusations against TCL, resulting in insufficient contacts to support jurisdiction.²⁴ TCL never sought the benefits or protection of Texas law. Accordingly, exercising personal jurisdiction over TCL would violate due process.²⁵

III. CONCLUSION

TCL did not purposefully seek the benefit of Texas law, do business in Texas, or engage in continuous or systematic contacts with Texas. It is impossible for Plaintiff to meet its burden to demonstrate this Court's personal jurisdiction over TCL. Therefore, the Court should dismiss all claims asserted by Plaintiff against TCL.

²¹ *Genetic Implant Systems, Inc., v. Core-Vent Corp.*, 123 F.3d 1455, 1458 (Fed. Cir. 1997); *The Akro Corp. v. Luker*, 45 F.3d 1541, 1545-46 (Fed. Cir. 1995).

²² *See* Ex. A, Wong Decl. at ¶ 3.

²³ *See id.* at ¶¶ 4-5, 7-9.

²⁴ *See Dickson Marine Inc. v. Panalpina, Inc.*, 179 F.3d 331,338 (5th Cir. 1999); *Felch*, 92 F.3d at 324 (holding that because the events giving rise to the cause of action, the result, and the purported negligence, occurred in Mexico, it "preclude[d] a finding that the instant litigation resulted from injuries arising out of or related to contacts between [defendant] and Texas").

²⁵ *See, e.g., Marathon Oil*, 182 F.3d at 294-95.

IV. PRAYER

For these reasons, TCL asks the Court to set this 12(b)(2) Motion to Dismiss for Lack of Personal Jurisdiction for a hearing and, after the hearing, sustain this Motion and enter a final judgment dismissing all of Plaintiff's causes of action against TCL.

Dated this 28th day of September, 2005.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon all counsel of record set forth below and the original upon the Clerk of Court on this the 28th day of September, 2005.

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A handwritten signature in black ink, appearing to read "P. Jason Collins", written over a horizontal line.

P. Jason Collins

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

BOARD OF REGENTS OF THE
UNIVERSITY OF TEXAS SYSTEM,

Plaintiff,

v.

ALCATEL,
ALCATEL USA, INC.,
AMOI ELECTRONICS, INC.,
ARIMA COMMUNICATION CORP.,
ARIMA COMPUTER (TEXAS) CORP.,
AUDIOVOX CORP.,
CURITEL COMMUNICATIONS, INC.,
GIZMONDO EUROPE, LTD.,
HAIER GROUP CO.,
HAIER AMERICA IMPORT, L.L.C.,
HAIER AMERICA TRADING L.L.C.,
HON HAI PRECISION INDUSTRY
CO. LTD., d/b/a CHI MEI
COMMUNICATION SYSTEMS, INC.,
RESEARCH IN MOTION LIMITED,
RESEARCH IN MOTION CORP.,
SHARP CORPORATION, a.k.a. SHARP
KABUSHIKI KAISHA, SYNEX
CORP.,
TCL COMMUNICATION
TECHNOLOGY HOLDINGS LIMITED,
TCL & ALCATEL MOBILE PHONES
LIMITED,
TIGER TELEMATICS, INC.,
VK CORPORATION, AND
VK MOBILE USA, INC.

Defendants.

Case No.: A-05-CA-198 SS

JURY DEMANDED

DECLARATION OF CHAMBERS WONG IN SUPPORT OF TCL'S MOTION TO
DISMISS FOR LACK OF PERSONAL JURISDICTION

Declaration of Chambers Wong



I, Chambers Wong, hereby declare:

1. I am the Executive Director of TCL Communication Technology Holdings Limited ("TCL"). I have been employed by TCL since March 2004. I make this declaration based on my personal knowledge in support of TCL's Motion to Dismiss for Lack of Personal Jurisdiction.

2. TCL is a Cayman Islands corporation having its principal place of business at Room 1502, Tower 6, China Hong Kong City, 33 Canton Road, Tsimshatsui, Kowloon, Hong Kong. TCL has no offices in the United States.

3. TCL does not conduct business within the State of Texas, nor has it ever conducted business in the State of Texas.

4. TCL has no offices or regular place of business in the State of Texas.

5. TCL has no employees, property, or agents for service of process in Texas.

6. TCL has never offered to sell or sold the accused phones identified in the Complaint in the United States, including the "One Touch 332" and the "One Touch 756."

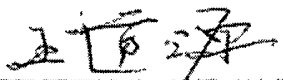
7. TCL does not, make, use, sell, offer to sell, or import any products in or into the United States, including the State of Texas.

8. TCL has not made, used, sold, offered to sell, or imported any products in or into the United States, including the State of Texas.

9. TCL does not advertise or promote its products or services in the State of Texas.

I declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct.

Dated: September 28, 2005



Chambers Wong

Declaration of Chambers Wong
